

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 and 2, drawn to an extraction process comprising extracting a raw extract from *Emblica officinalis* wherein the extraction is conducted under conditions of time, temperature and atmosphere to inhibit the formation of black specks and/or oligomeric and/or polymeric tannins and/or oxidation products thereof, classified in class 424, subclass 725.
- II. Claims 3 and 4, drawn to a process of producing a powdered extract of *Emblica officinalis* comprising a step of drying an aqueous solution of the extract wherein the drying is conducted under conditions of time, temperature and atmosphere to inhibit the formation of oligomeric and/or polymeric tannins and/or oxidation products thereof and/or black specks, classified in class 424, subclass 725.
- III. Claims 5-13, drawn to a process comprising enriching an extract of *Emblica officinalis* comprising steps of (A) and (B), classified in class 424, subclass 725.
- IV. Claim 14, drawn to an extract of *Emblica officinalis* produced by the process of Claim 1, classified in class 424, subclass 725.
- V. Claims 15 and 18, drawn to a powdered composition of *Emblica officinalis*, the improvement wherein the composition is macroscopically substantially

to completely devoid of black specks, classified in class 424, subclass 725.

- VI. Claim 16, drawn to powdered composition of *Emblica officinalis* wherein such composition contains at least 70% by weight of bio-active low molecular weight hydrolysable tannins, classified in class 424, subclass 725.
- VII. Claim 17, drawn to a powdered composition of *Emblica officinalis* wherein the composition contains less than 5% by weight of oligomeric and polymeric tannins having a molecular weight of above 1000, preferably less than 5% by weight of oligomeric and polymeric tannins having a molecular weight of above 2000, and especially preferred less than 5% by weight of oligomeric and polymeric tannins having a molecular weight of above 3000, classified in class 424, subclass 725.
- VIII. Claims 19-21, drawn to a skin or hair or personal care composition formed from ingredients comprising a powdered composition according to claim 15, classified in class 424, subclass 400 or subclass 70.1 or subclass 74, for example.
- IX. Claims 22-23, drawn to a pharmaceutical or nutritional composition form from ingredients comprising a powdered composition according to claim 15 in the form of a tablet, capsules, elixir, syrup or drinks, classified in class 424, subclass 408 or subclass or 439 or subclass 464, for example.

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The inventions are distinct, each from the other because of the following reasons:

Inventions I-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the three different groups are directed to three different inventions because the three different methods comprise different process steps and different experimental parameters in the making of different end products.

Inventions I-III and IV-IX are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another and materially different process as evidenced by the claims themselves.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their
different classification;
- (b) the inventions have acquired a separate status in the art due to their
recognized divergent subject matter;

- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

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Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product

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are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele Flood
Primary Examiner
Art Unit 1655

MCF
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/Michele Flood/
Primary Examiner, Art Unit 1655